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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,127	08/11/2006	Bernard Boursier	0600-1070	5770
466, 7590 03/26/2012 YOUNG & THOMPSON 209 Madison Street Suite 500 Alexandria, VA 22314				
EXAMINER				
TRAN, LIEN THUY				
ART UNIT		PAPER NUMBER		
1789				
NOTIFICATION DATE		DELIVERY MODE		
03/26/2012		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

**Office Action Summary****Application No.**

10/589,127

**Applicant(s)**

BOURSIER ET AL.

**Examiner**

LIEN T. TRAN

**Art Unit**

1789

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 January 2012.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 7-20 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 7-20 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-893)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 7,14 are rejected under 35 U.S.C. 102(b) as being anticipated by Dartey et al ( 4678672).

Dartey et al disclose a method for producing a baked product comprising the steps of forming a dough containing gluten, about 10-30% water, about 5-20% polydextrose and .05-.4% alkali metal bisulfite and leavening system, mixing the dough, fermenting the dough and baking the dough to obtain a baked product. ( see col. 6 line 50 through col. 7 line 68, col. 14 lines 6-25)

Dartey et al disclose the ingredients of the dough as claimed and the steps as claimed.

Claims 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brendel et al in view of the article in the " Journal of the Chinese Cereals and Oils Association".

Brendel et al disclose a method of making a baked product comprising the steps of forming a dough containing gluten, 60% water, 6.5% branched maltodextrins and .013% amylase, Kneading the dough, proofing the dough and baking the dough to form a baked product which is a bread. The branched maltodextrins have 15-35% 1-6 glucoside linkages, a reducing sugar content of less than 20% and a number average molecular mass of at most 4500g/mol. ( see example 6 and paragraph 0018)

Brendel et al do not disclose reducing agents as claimed and the baked product is brioche or a hamburger roll.

The Brendel et al dough contains wheat flour which contains gluten and also wheat gluten; thus, it is a dough containing gluten. The branched maltodextrins in Brendel have the same characteristics as claimed; thus, it inherently has the same molecular weight.

The article in the Journal teaches that different oxidizing agents can be used. Some common oxidizing agents include bromates, iodates, calcium peroxide etc.. Different oxidizing agents show different oxidation speeds in dough. The appropriateness of the speed of oxidation has very great effects on the workability of the dough and the quality of the bread. The article also teaches that reducing agents such as cysteine, glutathione, and sulphite are used in dough to react with disulphide bridged bonds, reducing the degree of cross-linking of proteins and thus shortening the kneading time and raising the workability of the dough.

It would have been obvious to make the bread such as hamburger roll, brioche if such configuration is wanted for the bread; this would have been an obvious matter of preference. One example in Brendel et al shows the use of ascorbic acid; however, it is well known the art that other oxidizing agents are also commonly used in dough. For example, bromate is a commonly used oxidizing agent for dough. Thus, it would have been obvious to one skilled in the art to use other oxidizing agent as substituting one known agent for another to perform the same function. Different oxidizing agents show different oxidation speeds; thus, it would also have been obvious to select different

agents depending on the speed desired. It would have been obvious to add a reducing agent as taught in the article to obtain the benefits disclosed. Using an additive for its art-recognized function would have been obvious to one skilled in the art. Since reducing agent is commonly used in dough, it would have been within the skill of one in the art to determine the amount through routine experimentation.

Claims 7-8,11-12,14-15,18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilibwa ( 6217930) in view of the article in " Journal of the Chinese Cereals and Oils Association".

Kilibwa discloses a method of making baked good. The method comprises the steps of forming a dough comprising wheat flour, bulking agents such as polydextrose in amount of 2-15% and water in amount of up to about 25%, kneading the dough and baking the dough to form baked products including rolls, bread, pizza etc.. ( see columns 5-6)

Kilibwa does not disclose the use and amount of reducing agent as claimed and the baked product is a brioche or hamburger roll.

The article teaches that reducing agents such as cysteine, glutathione, and sulphite are used in dough to react with disulphide bridged bonds, reducing the degree of cross-linking of proteins and thus shortening the kneading time and raising the workability of the dough.

It would have been obvious to add a reducing agent as taught in the article to obtain the benefits disclosed. Using an additive for its art-recognized function would have been obvious to one skilled in the art. Since reducing agent is commonly used in

dough, it would have been within the skill of one in the art to determine the amount through routine experimentation. The Kilibwa dough is a gluten containing dough because it contains wheat flour which has gluten. It would have been obvious to make the roll as hamburger roll when desiring such product. This would have been an obvious matter of preference.

Claims 9-10,13,16-17,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kilibwa in view of the article in " Journal of the Chinese Cereals and Oils Association as applied to claims 7-8,11-12,14-15,18-19 above, and further in view of Brendel et al ( 2002/0192344)

Kilibwa does not disclose the use of branched maltodextrin having the characteristics as claimed.

Brendel et al disclose a process for preparing a low-calorie food. The low-calorie food is made by replacing the high-calorie substances such as fat, maltodextrin, dextrose etc.. with a branched maltodextrin having between 15-35% 1-6 glucoside linkages, a reducing sugar content of less than 20% and Mn of at most equal to 4500g/mol. The branched maltodextrin is used in any food usually containing high-calorie substances. ( see paragraphs 0021, 0028)

Kilibwa teach to use bulking agent including maltodextrin or polydextrose in amount 2-15%. It would have been obvious to one skilled in the art to replace the maltodextrin or other bulking agent in the Kilibwa product with the branched maltodextrin taught by Brendel et al when desiring to make low-calorie product.

Brendel et al teach high calorie substances such as regular maltodextrin and dextrose can be replaced with branched maltodextrin to make a low calorie product.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 7-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No. 11/993025. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications are directed to methods for producing baked products containing improving agent selected from branched maltodextrin, pyrodextrin and polydextrose. The difference resides in the addition of resistant starch or gum as fiber source in the copending case. However, this difference is not patentably significant because the addition of fiber to baked product and the use of resistant starch and gum as fiber source are well known. It would have been obvious to add resistant starch or gum as fiber material to the baked product when desiring to increase the fiber content of the baked product or to make a fiber-enriched product. The proportion of fiber material can vary depending on the fiber content wanted.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

In the response filed 1/23/12, applicant submits a declaration to show that the addition of reducing agent has an effect on the quality of the baked product and it would not have been obvious to add a reducing agent to a known formulation with an expectation of success. This argument is not persuasive and the declaration is not



persuasive. The declaration is limited to brioche and the baked product claimed is not limited to brioche. The showing in one product with one example is not sufficient to draw a general conclusion that the addition of cystein has an impact on the quality of the baked product. Reducing agent is known to be used in baked products as shown in the article. The declaration does not address the rejection because the both the Brendel and Kilibwa teach the use of the claimed improving agent in baked product. The addition of the reducing agent would have been obvious in view of the teaching of the article. Thus, any unexpected result obtained from the use of the two agents will inherently be present in the prior art product. Even without knowing anything about the improvement in volume, one would still be motivated to use the two agents for the reasons taught in the prior art.

Applicant further argues to arrive at the claimed product, one would have to remove the ascorbic acid and add a reducing agent when Brendel does not suggest that lessening of the cohesion of the gluten network would be desirable. This argument is not persuasive. Brendel discloses one example containing ascorbic acid; there is not requirement that only ascorbic acid can be used. The article teaches other oxidizing agents such as bromate, iodate, peroxide. Different oxidizing agent has different speed of oxidation. Thus, it would have been obvious to one skilled in the art to use bromate or other agent beside ascorbic acid. A 103 rejection must also take into consideration the level of skill of one in the. A lack of disclosure or recognition of a benefit does not mean the adding of an additive is not obvious. Reducing agent is commonly added to dough product. The article specifically teaches that adding such additive has the benefit

of shortening kneading time. In view of the teaching of the article, one would have been motivated to add a reducing agent to shorten the kneading time which in turn shortens the overall process of producing the baked product. Adding an additive for its art-recognized function would have been obvious to one skilled in the art.

With respect to the Kilibwa reference, applicant argues one would be strongly discourage from adding a reducing agent because Kilibwa teaches that further decrease in viscosity and increase in stickiness would have a negative effect. The discussion of viscosity and stickiness is in relation to the amount of betaine. There is no evidence to conclude from the teaching of the article that adding a reducing agent reduces viscosity and increase stickiness. The article teaches the reducing agent shortens kneading time; there is no disclosure concerning viscosity and stickiness.

The double patenting rejection is maintained as above. The time of filing of the application does not determine the double patenting issue. Both applications are co-pending.

Applicant's arguments filed 1/23/12 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN T. TRAN whose telephone number is (571)272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Humera Sheikh can be reached on 571-272-0604. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 21, 2012

/LIEN T. TRAN /

Primary Examiner, Art Unit 1789